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6 IN THE UNITED STATES DISTRICT COURT
7
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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10 MICHELLE DE ANN COX,

11 Plaintiff,

No. C 16-07183 WHA

12 v.

13 NANCY A. BERRYHILL, Deputy
14 Commissioner for Operations, performing
15 duties and functions not reserved to the
Commissioner of Social Security,

16 Defendant.
17 _____/

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFF'S MOTION
FOR ATTORNEY'S FEES**

18 **INTRODUCTION**

19 In this social security appeal, plaintiff requests the award of attorney's fees and costs
20 under the Equal Access to Justice Act, 28 U.S.C Section 2341(a) and (d). Plaintiff requests any
21 award be paid directly to her attorney. For the below listed reasons, plaintiff's request is
22 **GRANTED IN PART and DENIED IN PART.**

23 **STATEMENT**

24 Plaintiff Michelle De Ann Cox previously applied for disability benefits and was denied
25 by an ALJ. Plaintiff appealed her decision to district court in 2015 and Magistrate Judge
26 Jacqueline Scott Corley remanded plaintiff's case, finding that the ALJ had improperly
27 discounted the opinions of medical professionals cited by plaintiff. On remand, a different
28 ALJ evaluated the medical evidence and almost entirely adopted the analysis of the original

ALJ, including the errors indicated by Judge Corley. Plaintiff again appealed the second ALJ decision and a prior order remanded the decision due to its failure to properly weigh the medical evidence — the undersigned judge thereby granted in part plaintiff’s motion for summary judgment. Plaintiff now applies for \$13,404 in attorney’s fees under the Equal Access to Justice Act (EAJA) and requests that the fees be paid directly to her attorney to compensate both the attorney and his law clerk. Defendant failed to timely respond to plaintiff’s motion. After being ordered to show cause, defendant ultimately filed a response that disputed only the reasonableness of plaintiff’s requested award (Dkt. Nos. 1, 21, 23, 26–27).

ANALYSIS

1. PAYMENT OF ATTORNEY’S FEES.

Pursuant to the EAJA, a party can receive attorney’s fees if (1) a party “prevails” in a civil action and (2) the government’s position in the action, including in the underlying administrative proceedings, is not “substantially justified.” 28 U.S.C 2 § 412(d)(1)(A); *Yespovich v. Colvin*, 166 F. Supp. 3d 1000, 1002 (N.D. Cal. 2015). Here, plaintiff is entitled to attorney’s fees.

First, a party that obtains a reversal and remand in a social security benefits case is a prevailing party under the EAJA. *Gutierrez v. Barnhart*, 274 F.3d 1255, 1257 (9th Cir. 2001). Given that plaintiff’s benefits appeal was reversed and remanded, plaintiff is a prevailing party for the purposes of the EAJA.

Second, plaintiff contends that the Deputy Commissioner’s position was not substantially justified, as evidenced by the two reversals and remands of the Deputy Commissioner’s analysis. No special circumstances have been alleged that would render unjust an award of attorney’s fees to plaintiff. § 2412(d)(1)(A). The Government bears the burden to show that its position was substantially justified. *Meier v. Colvin*, 727 F.3d 867, 870 (9th Cir. 2013). The Deputy Commissioner does not dispute that her position fell short of substantially justified. Further, a prior order found that on remand, the ALJ’s rejection of plaintiff’s treating doctor’s opinion was not justified by the requisite “clear and convincing reasoning supported by substantial evidence.” *See Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194, 1198 (9th. Cir. 2008).

1 A finding that an agency's decision lacked substantial evidence is a strong indication that the
2 position of the United State was unjustified. *Meier*, 727 F.3d at 872 (quoting *Thangaraja v.*
3 *Gonzales*, 428 F.3d 870, 874 (9th Cir. 2005)). This order agrees with both parties that plaintiff
4 is entitled to attorney's fees.

5 **2. REASONABLENESS OF FEES AND EXPENSES.**

6 A plaintiff bears the burden of establishing the reasonableness of the requested fee
7 award under the EAJA. A plaintiff must thereby "document the appropriate hours spent in
8 litigation by submitting evidence in support of those hours worked." *Gates v. Deukmejian*, 987
9 F.2d 1392, 1397 (9th Cir.1992). The appropriate number of the hours expended includes hours
10 "reasonably expended in pursuit of the ultimate result achieved, in the same manner that an
11 attorney traditionally is compensated by a fee-paying client for all time reasonably expended on
12 a matter," *Hensley v. Eckerhart*, 461 U.S. 424, 431 (1983), and thus does not include hours
13 that are "excessive or duplicative," *Costa v. Comm'r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135
14 (9th Cir. 2012). It follows that fee-shifting does not extend to effort expended on issues not
15 actually adjudicated, *Hardisty v. Astrue*, 592 F.3d 1072, 1077 (9th. Cir. 2010), though courts
16 should generally defer to the judgment of the winning attorney to determine the appropriate
17 fee award under the EAJA, *Costa*, 690 F.3d at 1136.

18 The Deputy Commissioner correctly indicates that in the instant case, not all of
19 plaintiff's arguments were adjudicated, as explained below. Our court of appeals mandates
20 that no fees should be awarded for time spent preparing non-adjudicated issues. *Hardisty*,
21 592 F.3d at 1077. Accordingly, the full fee award requested cannot reasonably be awarded.
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If reducing a fee award, a district court must offer a clear explanation. *Moreno v. City of Sacramento*, 534 F.3d 1106, 1113 (9th Cir. 2008). This order concludes that plaintiff should be awarded \$9,500.33 and will now explain why this figure is appropriate.

DATE	DESCRIPTION OF WORK	HOURS	GOVERNMENT'S OBJECTIONS
06/30/2017	Start drafting law of case.	1.00	Not all legal arguments were adjudicated.
07/01/2017	More draft law of case; final edit; email Mr. Weems.	4.80	Not all legal arguments were adjudicated.
07/08/2017	More draft of summary judgment; compare prior litigation stance.	1.00	Not all legal arguments were adjudicated.
07/09/2017	More draft of summary judgment.	2.00	Not all legal arguments were adjudicated.
07/12/2017	More draft motion of summary judgment re: arg #3. Westlaw research and finalize; e-mail Mr. Weems to review.	8.00	Not all legal arguments were adjudicated.
09/01/2017	Draft motion for summary judgment section dealing with the demand for payment or remand for further proceedings, specifically application of credited-as-true rule and propriety of remand for payments based on B criteria of multiple listings.	3.70	Not all legal arguments were adjudicated.
09/05/2017	Review and revise motion draft discussion of credibility assessment issues.	4.10	Not all legal arguments were adjudicated.
09/09/2017	Review and revise motion further development of step three issues; further development of credibility issues.	4.00	Not all legal arguments were adjudicated.
09/10/2017	Review and revise motion for summary judgment, update introduction and fact discussions; re-examination of AR annotations re underdeveloped arguments.	2.80	Not all legal arguments were adjudicated.

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1 plaintiff's counsel's expertise and due to the time customarily invested in litigating social
2 security benefits appeals. When awarding fees under the EAJA, not only should courts defer
3 to the winning counsel's assertion of the proper fee award, but courts cannot impose a de facto
4 limit on fee awards based on the time usually spent litigating "routine" social security cases.
5 *See Costa*, 690 F.3d at 1136. Defendant's arguments are thus not persuasive in further reducing
6 the fee award.

7 **3. DIRECT PAYMENT TO ATTORNEY.**

8 A plain reading of the Anti-Assignment Act, which generally forbids an assignment of
9 the right to be paid directly from the United States Treasury, mandates that an interest in a case
10 cannot be assigned unless the requirements for the assignment enumerated in the Act are met.
11 *See United States v. Kim*, 806 F.3d 1161, 1165–69 (9th Cir. 2015). Alternatively, the
12 Government can waive the requirements of the Act. *United States v. \$186,416 in United States*
13 *Currency*, 722 F.3d 1173, 1176 (9th Cir. 2013). The attorney, however, has no statutory right
14 to the direct payment of the attorney's fee award under the EAJA. Parties can contract for
15 such a direct assignment, but the Government must either waive the requirements of the
16 Anti-Assignment Act or the assignment must comport with the Act in order to effectuate
17 direct payment to the attorney. Further, EAJA fees are subject to offset if the prevailing party
18 owes a government debt. *Astrue v. Ratliff*, 560 U.S. 586, 591–97 (2010).


19 Here, plaintiff's counsel has submitted a fee agreement that indicates plaintiff had
20 assigned any attorney's fee award under the EAJA to counsel (Dkt. No. 24, Exh. 1). There is no
21 information on whether plaintiff owes a pre-existing debt to the government. Accordingly, this
22 order holds EAJA fees shall be paid directly to plaintiff's counsel.
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CONCLUSION

For the reasons above, plaintiff's motion for attorney's fees is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff is entitled to recover reasonable attorney's fees in the amount of \$9,500.33, to be paid directly to plaintiff's counsel. The August 16 hearing is thereby **VACATED**.

IT IS SO ORDERED.

Dated: August 6, 2018.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE